

Arbitration and mediation of disputes



Most customer agreements with securities broker/dealer include an “arbitration clause” requiring arbitration if you have a dispute over your rights or liabilities under the agreement. Even if securities laws have been violated, this provision may prevent you from filing a lawsuit in a state or federal court.

There is no state or federal requirement that an investor must sign an agreement that requires arbitration of disputes. Accordingly, you may ask, as a condition of your doing business with a particular firm, that the arbitration requirement be removed from the agreement. In case of a dispute, however, arbitration may be faster and less expensive than the courts.

What is arbitration?

Arbitration is a process of dispute resolution in which a neutral third person -- the arbitrator -- makes a decision after a hearing at which both parties have an opportunity to present their case. The National Association of Securities Dealers (NASD) offers the largest arbitration forum in the securities industry, but several other arbitration forums are available to investors.

Arbitration is not part of the court system, and can be a quicker and a less-expensive alternative to filing a lawsuit. Because arbitration is

binding and is subject to review by a court on a very limited basis, an investor should seek legal advice before agreeing to arbitration.

What is mediation?

Mediation is an informal alternative to arbitration. In the mediation process, a neutral third person –the mediator – help disputing parties reach an agreement. Unlike an arbitrator, the mediator has no power to impose a decision on the parties.

The NASD offers the investors the option of voluntary mediation to settle disputes with firms or brokers. While a typical arbitration case can take nearly a year, NASD reports that many of the early mediation test cases resulted in settlements within weeks.

The arbitration process

The arbitration process begins when you file a claim and pay a filing fee with an arbitration service.

Legal representation

There are few formal rules governing either procedure or evidence at an arbitration hearing. Both sides present evidence and the hearing seldom lasts more than a day or two. Do not be misled into thinking arbitration is informal, like small claims court. Brokerage firms will always be represented by attorneys at arbitration hearings. If you pursue arbitration, consider consulting with an attorney.

About the arbitrator

A single arbitrator or a panel of three arbiters may hear cases. The size of the panel depends upon the dollar amount of the claim. During the proceeding, the arbitrator will hold a hearing, listen to oral testimony, review the evidence, and render a decision.

How are cases settled?

Arbitration hearings can be held at almost any location convenient to the parties. Arbitrators usually are required to make a decision in 30 business days. For small claims (less than \$10,000), you may request that the case be decided based solely on the submission of evidence presented.

Arbitrators are not required to provide reasons for their decisions. Therefore, an investor can lose a decision with little or no explanation as to why, and be unable to appeal to the court system for relief.

The arbitration procedure is final and binding, subject to review by a court only on a very limited basis. For these reasons, an investor should consult with legal counsel before arbitrating a dispute.

Four organizations conduct most securities arbitration hearings:

NASD
American Arbitration Association
New York Stock Exchange
American Stock Exchange

The organization having jurisdiction over your dispute usually is determined by the arbitration clause in your brokerage agreement.

Investors can obtain copies of all NASD arbitration decisions, including those involving employment, customer, and intra-industry disputes. This service can be reached by calling (301) 590-6707.

Arbitration facilities

NASD Arbitration Department
33 Whitehall Street
New York, New York 10004
(212) 480-4881

American Arbitration Association

140 West 51st Street, 9th Floor
New York, New York 10020
(212) 484-4000

Municipal Securities Rulemaking Board

1818 N Street, NW, Suite 800
Washington, DC 20036
(202) 223-9347

New York Stock Exchange, Inc.

20 Broad Street
New York, New York 10005
(212) 656-2772

For more information

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Office of the Commissioner of Securities
1010 Richards Street
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